IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

CARL WAYNE CRABTREE	§	
v.	§	CIVIL ACTION NO. 6:17cv102

DIRECTOR, TDCJ-CID

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ORDER OF ADMINISTRATIVE CLOSING

§

The Petitioner Carl Crabtree, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Crabtree was convicted of two counts of intoxication manslaughter and one count of intoxication assault with a vehicle, receiving two 20-year sentences and one 10-year sentence. He sought state habeas corpus relief to no avail.

In his federal habeas corpus petition, Crabtree asserts that he received ineffective assistance of counsel in several particulars, resulting in his entering an involuntary guilty plea. He states that some of his grounds for relief were unavailable at the time he filed his state habeas proceedings, and has filed a motion to stay his case to allow him to return to state court and complete the exhaustion process.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion to stay be granted and the case administratively closed to permit Crabtree to exhaust his remaining claims in state court. *Rhines v. Webber*, 544 U.S. 269, 277, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005). The Magistrate Judge further recommended that the stay be conditioned on Crabtree

pursuing his state remedies within 30 days of the date of entry of the order of administrative closing and his returning to federal court within 30 days of the date of final disposition of his state court proceedings in the event these proceedings do not grant him the relief he seeks.

No objections were filed to the Report, and the parties are therefore barred from *de novo*

review by the district judge of those findings, conclusions, and recommendations and, except upon

grounds of plain error, from appellate review of the unobjected-to proposed factual findings and

legal conclusions accepted and adopted by the district court. Douglass v. United Services

Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc). Crabtree did file a "motion

for leave to file motion for additional 30 days to pursue state court remedies." In the interest of

justice, this will be construed as a motion for extension of the 30-day period in which to pursue his

state remedies, and this request should be granted. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 6) is **ADOPTED** as the

opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is

ADMINISTRATIVELY CLOSED and placed on an inactive docket for administrative and

statistical purposes. The case may be reopened at such time as Crabtree notifies the Court that all

state processes have been completed on the claims he wishes to present in federal court. This

administrative closing shall have no effect upon the substantive rights of any party. It is further

ORDERED that the Petitioner's motion for extension of time to pursue his state court

remedies (docket no. 8) is GRANTED. The Petitioner shall have until June 1, 2017, in which to

seek habeas corpus relief in state court or otherwise pursue his state court remedies

So ORDERED and SIGNED this 3rd day of May, 2017.

Ron Clark, United States District Judge

Rm Clark